

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

KAREN TESTERMAN
LYNN-DIANE BRIGGS
and WAYNE PAUL SAYA SR.,

Plaintiffs

V.

Case No. 1:23-cv-00499-JL-AJ

DAVID SCANLAN, SECRETARY OF STATE
FOR NEW HAMPSHIRE
and CHRIS AGER, NEW HAMPSHIRE
REPUBLICAN STATE COMMITTEE

Defendants.

**CHRIS AGER AND NEW HAMPSHIRE REPUBLICAN STATE COMMITTEE’S
JOINDER IN, AND SUPPLEMENTAL AUTHORITY IN SUPPORT OF,
SECRETARY OF STATE’S OBJECTION TO PLAINTIFFS’
MOTION TO ALTER OR AMEND JUDGMENT**

Defendants Chris Ager and the New Hampshire Republican State Committee, (jointly, the “NHRSC”), by and through their attorneys, Cleveland, Waters and Bass, P.A., hereby join in the New Hampshire Secretary of State’s objection to plaintiffs’ motion to alter or amend judgment and submit the below supplemental authority in support thereof.

Plaintiffs Wayne Saya and Lynn-Diane Briggs have moved this court to alter or amend its order dismissing the plaintiffs' complaint for lack of standing. *See* Doc. No. 70. The justification for such request, in part, relies on purportedly new evidence which the plaintiffs claim supports their standing in this lawsuit. *See* Doc. No. 70 at 2-3. Regardless of whether such evidence could

support the plaintiffs' theory of standing, the evidence was not in existence at the time the plaintiffs amended their complaint and cannot be considered in the standing inquiry.

As the First Circuit recently held in *Castro v. Scanlan*, standing is assessed based on "the facts as they existed at the time the [operative] complaint was filed." 86 F.4th 947, 954 (1st Cir. 2023) (quoting *Steir v. Girl Scouts of the USA*, 383 F.3d 7, 15 (1st Cir. 2004)). The facts the plaintiffs raise all relate to the fact that the election has occurred. *See* Doc. No. 70 at 2-3. The operative complaint was filed on December 13, 2023, and was accepted by the court as the operative complaint on December 21, 2023. *See* Doc. No. 45. Either of these dates occurred well before any of the newly-presented evidence came into existence. Regardless of whether this new evidence supports plaintiffs' standing, it would be improper for this court to consider such evidence based on *Castro*.

Respectfully submitted,

CHRIS AGER AND THE NEW HAMPSHIRE
REPUBLICAN STATE COMMITTEE,
By Their Attorneys,

Date: February 1, 2024

/s/ Jacob M. Rhodes
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CERTIFICATE OF SERVICE

I hereby certify that the within document is being served electronically through the court's electronic filing system upon counsel of record and all other parties who have entered electronic service contacts in this docket. In addition, the following parties have been served by email and U.S. Mail:

Karen Testerman (karen@karentesterman.com)
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Date: February 1, 2024

/s/ Jacob M. Rhodes

Jacob M. Rhodes, Esq.